

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE DOCUMENT SUBPOENA directed to
Nonparty JAMES FALLON and issued in
connection with

Yuga Labs, Inc. v. Ripps et al., No. 2:22-cv-
04355-JFW-JEM (C.D. Cal.)

(Pending in the United States District Court for
the Central District of California)

MISCELLANEOUS CASE NO:

**DECLARATION OF DANA M. SESHENS IN SUPPORT OF
MOTION OF NONPARTY JAMES FALLON TO QUASH DOCUMENT
SUBPOENA ISSUED BY RYDER RIPPS AND JEREMY CAHEN**

I, Dana M. Seshens, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a partner at the firm of Davis Polk & Wardwell LLP, counsel for nonparty James Fallon. I respectfully submit this Declaration in support of the motion to quash the subpoena served upon him via his counsel by Ryder Ripps and Jeremy Cahen on February 24, 2023 (the “Subpoena”). Attached hereto as **Exhibit 1** is a true and correct copy of the Subpoena.

A. The Ripps Litigation

2. The Subpoena was issued in connection with *Yuga Labs, Inc. v. Ripps et al.*, No. 2:22-cv-04355-JFW-JEM, an action brought by Yuga Labs, Inc. (“Yuga”) against Ripps and Cahen and pending in the Central District of California (the “*Ripps* Litigation”). Attached hereto as **Exhibit 2** is a true and correct copy of the complaint filed in the *Ripps* Litigation at ECF No. 1 on June 24, 2022.

3. Attached hereto as **Exhibit 3** is a true and correct copy of Ripps and Cahen’s October 3, 2022 motion to strike the complaint’s state law causes of action under

California's anti-SLAPP statute and dismiss its federal law causes of action for failure to state a claim, or alternatively, to dismiss the complaint in its entirety, filed in the *Ripps* Litigation at ECF No. 48.

4. Attached hereto as **Exhibit 4** is a true and correct copy of the court's December 16, 2022 order granting in part and denying in part Ripps and Cahen's motion to dismiss and strike, filed in the *Ripps* Litigation at ECF No. 62.

5. Attached hereto as **Exhibit 5** is a true and correct copy of Ripps and Cahen's December 27, 2022 answer to the complaint, filed in the *Ripps* Litigation at ECF No. 65.

6. Attached hereto as **Exhibit 6** is a true and correct copy of Ripps and Cahen's December 21, 2022 notice of appeal of the order granting in part and denying in part their motion to dismiss and strike, filed in the *Ripps* Litigation at ECF No. 63.

7. Attached hereto as **Exhibit 7** is a true and correct copy of Ripps and Cahen's February 23, 2023 motion to stay the *Ripps* Litigation as to Yuga's federal law causes of action pending the outcome of the appeal, filed in the *Ripps* Litigation at ECF No. 118.

8. Attached hereto as **Exhibit 8** is a true and correct copy of the scheduling and case management order, entered in the *Ripps* Litigation on October 21, 2022 at ECF No. 57.

9. Attached hereto as **Exhibit 9** is a true and correct copy of discovery correspondence, dated December 31, 2022, from Henry Nikogosyan to Ethan M. Thomas, filed at ECF No. 103-14 in the *Ripps* Litigation.

10. Attached hereto as **Exhibit 10** is a true and correct copy of the Central District of California Local Rule 37 joint stipulation filed in connection with Ripps and Cahen’s motion to compel Yuga to respond to their 30th and 31st requests for production, filed in the *Ripps* Litigation at ECF No. 103-1.

B. The Real Litigation

11. While the Ripps Litigation was pending, an unrelated case—in which Mr. Fallon is a defendant—was filed in the Central District of California on December 8, 2022 and captioned *Adonis Real et al. v. Yuga Labs, Inc. et al.*, No. 2:22-cv-08909-FMO-PLA (C.D. Cal.) (the “*Real* Litigation”). Attached hereto as **Exhibit 11** is a true and correct copy of the complaint filed at ECF No. 1 in the *Real* Litigation.

12. Attached hereto as **Exhibit 12** is a true and correct copy of the order entered in the *Real* Litigation at ECF No. 25.

13. Attached hereto as **Exhibit 13** is a true and correct copy of the order entered in the *Real* Litigation at ECF No. 40.

14. Attached hereto as **Exhibit 14** is a true and correct copy of the January 5, 2023 notice of appearance filed in the *Real* Litigation at ECF No. 22 by outside counsel, on behalf of both Yuga and Guy Oseary.

C. The Subpoena

15. Attached hereto as **Exhibit 15** is a true and correct copy of the January 12, 2023 email in which counsel for Ripps and Cahen first contacted Mr. Fallon’s counsel in the *Real* Litigation about the Subpoena.

16. On February 6, 2023, counsel for Ripps and Cahen and counsel for Mr. Fallon, including the undersigned, participated in a meet and confer via videoconference

to discuss the Subpoena. During that discussion, counsel for Ripps and Cahen indicated, among other things, that their clients have obtained, or are in the process of obtaining, discovery from Guy Oseary, who, according to the allegations in the *Real* Litigation, allegedly acted as Yuga's agent in connection with the sale and promotion of Bored Ape Yacht Club NFTs to celebrities. According to counsel, Mr. Oseary was scheduled to sit for a third-party deposition in the *Ripps* Litigation on or about March 1, 2023.

17. Attached hereto as **Exhibit 16** is a true and correct copy of the February 24, 2023 email to Mr. Fallon's counsel through which service of the Subpoena was effected.

18. The Subpoena was signed by Louis Tompros, counsel for Ripps and Cahen. Attached hereto as **Exhibit 17** is a true and correct copy of Mr. Tompros' law firm profile.

19. A March 6, 2023 search of New York State Unified Court System's online attorney database¹ for "Louis Tompros" does not return any results. Attached hereto as **Exhibit 18** is a true and correct copy of the results of such a search.

20. A March 6, 2023 search of Connecticut online attorney database² for "Tompros" does not return any results. Attached hereto as **Exhibit 19** is a true and correct copy of the results of such a search.

21. Vermont publishes a list of attorneys that are admitted to practice law in the state and in good standing.³ Attached hereto as **Exhibit 20** is a true and correct copy

¹ The New York State Unified Court System's online attorney database can be accessed at <https://iapps.courts.state.ny.us/attorneyservices/search?1>.

² The Connecticut online attorney database can be accessed at <https://www.jud.ct.gov/attorneyfirminquiry/attorneyfirminquiry.aspx>.

³ The published list of attorneys admitted to practice law in the state of Vermont and in good stand can be accessed at https://www.vermontjudiciary.org/sites/default/files/documents/AttorneyGoodStanding_17.pdf.

of the list reflecting attorneys satisfying those criteria as of March 1, 2023. It does not include Mr. Tompros.

Dated: New York, New York
March 6, 2023

/s/ Dana M. Seshens

Dana M. Seshens
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